

**DEPARTMENT OF COMMUNITY INITIATIVES  
CITY OF SAN ANTONIO**

115 PLAZA DE ARMAS, SUITE 210  
SAN ANTONIO, TX 78205

**DEPARTMENT DIRECTIVE**

**Page 1**

EFFECTIVE DATE:

January 2, 2002

REVISION DATE:

SUBJECT:

**DELEGATE AGENCY AND SUBCONTRACTOR  
PROCEDURES FOR PURCHASING AND  
PROCUREMENT**

## **I. PURPOSE**

To establish a uniform process in which items may be purchased or procured by Delegate Agencies and other Department of Community Initiatives (DCI) subcontractors, hereinafter referred to collectively as "subcontractors".

## **II. RESPONSIBILITY**

All subcontractors shall ensure that the proper procedure for purchasing all items are followed. All purchases must be made in accordance with Chapter 252 of the Local Government Code. Additionally, grant-funded activities must adhere to the purchasing/procurement guidelines established by the funding entity. Failure to follow this policy and proper procedure may result in a disallowed cost.

It is the responsibility of the subcontractor to maintain a procurement file of all required documentation for all purchases and procurements that includes ALL back up documentation for subcontractor purchases using City funds.

**Subcontractors** are required to adhere to purchasing dollar limits referenced in Section IV of this directive and should maintain a procurement file for any purchase made under these guidelines. Subcontractors will not utilize the City of San Antonio's purchasing department, but rather, must develop their own procedures to comply with the bidding requirements of the City of San Antonio and the source of funds received by the Delegate Agency or subcontractor as specified in their *Contract*.

It is the responsibility of the division to notify their assigned Delegate Agencies / subcontractors regarding this purchasing directive.

## **III. REFERENCE**

Local Government Code § 252

#### **IV. BACKGROUND**

The amount of projected annual expenditure and the item being purchased will determine the procedures that should be followed.

For purchases of goods and non-professional services other than high technology, insurance, and public works<sup>1</sup> the following limits apply:

- \$100 or less – See the policy for Petty Cash (City of San Antonio guidelines)
- Under \$500 – Purchases may be made from any selected vendor. (DCI staff must utilize annual city contracts, if available.) Subcontractor personnel must ensure that total purchases from the selected vendor do not exceed \$499.99 for the year.
- \$500-\$3,000.00 in aggregate purchases over an annual period (This applies to all contracts with Alamo Workforce Development<sup>2</sup> or the Texas Workforce Commission and others that may be identified in the future.) The Subcontractor must obtain either written, or documented verbal quotes, from at least three (3) responsible vendors which should be secured via telephone or fax. The Bid Sheet or a similar document is then completed. When using this process, the vendor offering the lowest price or justifiable best value shall be selected. Purchases made through this process must be maintained in a file by the Subcontractor.
- \$3,000.00 or less, if funds are other than AWD, TWC or others requiring stricter limits, no formal competitive bidding is required. For purchases using AWD, TWC funds or other funds requiring stricter limits, no formal competitive bidding is required for those made under \$500. See above bullet for purchases between \$500 and \$2,999.99 using AWD, TWC, other funds requiring stricter limits.

Purchases covered by these policies and procedures shall be for goods or services in an aggregate of less than \$3,000.00 for the program/contract year, i.e. purchases under these procedures shall not exceed \$2,999.99 cumulative in a program/contract year. These procurements shall not be broken down into small purchases to avoid compliance with procurement requirements.

Subcontractors must procure all purchases over \$3,000 cumulative in a program/contract year in accordance with Chapter 252 of the Local Government Code which is incorporated as an attachment to this directive.

---

<sup>1</sup> *Public Works* is defined as a "contract for constructing, altering, or repairing a public building or carrying out or completing any public work." It includes work paid for in whole or part with public funds, and work, which may not be done under the direct supervision of the City, such as a Developer Participation Contract.

<sup>2</sup> Current Alamo Workforce Development contracts are Youth Opportunity Grant and Child Care Development Funds.

Local Government Code § 252.0215 Competitive Bidding in Relation to Historically Underutilized Business: A municipality, in making an expenditure of more than \$3,000 but less than \$25,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the General Services Commission pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section. The list of historically underutilized businesses may be found at <http://www.gsc.state.tx.us/>

## **V. PURCHASES MADE BY SUBCONTRACTORS**

The procurement of goods and services with an annual aggregate cost to the City of less than \$500.00 for AWD and TWC Contracts, and \$3,000 for all other city purchases unless otherwise specified by the funding source, may be secured without receiving three bids and shall allow discretion in the purchases with established vendors for purposes of convenience and/or expediency. However, it shall be the responsibility of the subcontractor, as monitored by the respective division, to use good judgment in these procurements and to annually or as needed conduct cost/price comparison of those vendors who are utilized repeatedly in this category, or when an item is purchased without previous history or knowledge of cost variables.

Sole Sources require completion of the sole source justification form (attached) and review and approval by the Chief Financial Officer of DCI.

Any variation of the procurement rules require completion of a Certificate of Exemption Form (attached).

### **A. Bid Sheet Completion Procedures**

A bid sheet or similar document utilized by the Delegate Agency/Subcontractor is completed for any item(s) that are being purchased through a grant fund<sup>2</sup> that requires at least three quotes for purchases over \$500. Subcontractor purchases using city funds for over \$3,000 must adhere to Local Government Code Chapter 252 procurement rules. **Subcontractors** may utilize the attached Bid Sheet or may utilize their own procurement process as long as it meet the guidelines set forth in Section IV.

---

<sup>2</sup> Currently, grants requiring three quotes are those with Alamo Workforce Development and / or Texas Workforce Commission. At present, this includes Youth Opportunity and Child Care Development Funds.

**B. Bid Sheet completion instructions**

**Division / Section** - See attached matrix for assistance with this line.

**Requisitioned by** - Person to be contacted regarding the purchase requisition. This person should be able to answer questions regarding information on the requisition or the item to be purchased.

**Date Required** – The date the product is needed.

**Division Chief Approval** – Signature of Division / Program Manager / Asst. Manager

**Fund** – See attached matrix for assistance with this line.

**Dept** - See attached matrix for assistance with this line.

**Division** – See attached matrix for assistance with this line.

**Section** – See attached matrix for assistance with this line.

**Object** – Get object number from Accountant or Fiscal Officer.

**Index No.** – Get index number from Accountant or Fiscal Officer.

**Project No.** – Get Project number from Accountant or Fiscal Officer.

**Project Name** – See attached matrix for assistance with this line.

**Quan.** -- Number of items to be purchased.

**Items** -- Provide a detailed description of the item that includes all pertinent information such as size, color, etc.

**Unit** -- Cost per one unit. If a unit contains more than one item (such as a dozen pencils) please specify number per unit.

**Vendor Name** – Write the name of each vendor from which you are getting a quote.

**Amount** -- Enter the total amount per type of item -- quantity multiplied by the unit cost. There should be an amount for at least three vendors as indicated in the Vendor Column.

**Totals** -- The sum of all entries in the **Amount** column.

**Terms** – How long will they give us for payment. Generally Net 60 days is required so that we have time for Finance to get a check to them.

**Delivery** – Date of Delivery. Ensure that if there is a shipping charge, it is included in your totals.

**Supply or Services estimated to last** -- enter a time frame, generally plan for 1 year.

**Requisitioner's Signature and date** – Person getting the quotes should sign and date bid sheet here.

**C. Receiving Merchandise and Inventory Tracking**

Procedures should be established by the Subcontractor that meet Department of Community Initiatives and funding agent (if applicable) requirements.

**IX. Request for Proposals (RFP), Request for Qualifications (RFQ), Request for Applications (RFA) and Request for Information (RFI) Procedures.**

A copy of all RFPs, RFQs, and RFAs using City of San Antonio funds should be provided by the Delegate Agency to their Division contact person at least 10 working days prior to release. Divisions should provide a copy of such to DCI's Contract Coordinator at least 5 working days prior to release. Drafts are acceptable.

**A. Requests for Information**

RFIs are used solely for gathering of information in order to determine if a procurement should take place. An RFI may be useful in determining sole source.

**B. Requests for Qualifications**

RFQs are used when establishing a qualified vendor list. RFQ's are only used for professional services. Under an RFQ, any qualified vendor is placed on the vendor list and may receive a contract under an individual referral arrangement.

**C. Request for Applications**

RFAs are used when the intention is for all qualified applicants to receive an award.

**D. Request for Proposals**

RFPs are used when a professional service is being procured.

**X. Distribution of this Department Directive**

The respective Division contact person will make a copy of this Directive available to all Delegate Agencies and Subcontractors.

**DEPARTMENT OF COMMUNITY INITIATIVES  
CITY OF SAN ANTONIO**

115 PLAZA DE ARMAS, SUITE 210  
SAN ANTONIO, TX 78205

**DEPARTMENT DIRECTIVE**

**Page 6**

Any questions regarding the content of this Directive should be referred to the Department of Community Initiatives' Chief Financial Officer.

**XI. ATTACHMENT(s)**

Local Government Code Chapter 252

Bid Sheet

Sole Source Justification Form

Procurement Certificate of Exemption



Dennis J. Campa

Director, Department of Community Initiatives

12-28-01  
Date Signed

## **CHAPTER 252. PURCHASING AND CONTRACTING AUTHORITY OF MUNICIPALITIES**

### **SUBCHAPTER A. GENERAL PROVISIONS**

#### **§ 252.001. Definitions**

In this chapter:

- (1) "Bond funds" includes money in the treasury received from the sale of bonds and includes the proceeds of bonds that have been voted but have not been issued and delivered.
- (2) "Component purchases" means purchases of the component parts of an item that in normal purchasing practices would be purchased in one purchase.
- (3) "Current funds" includes money in the treasury, taxes in the process of being collected in the current tax year, and all other revenue that may be anticipated with reasonable certainty in the current tax year.
- (4) "High technology procurement" means the procurement of equipment, goods, or services of a highly technical nature, including:
  - (A) data processing equipment and software and firmware used in conjunction with data processing equipment;
  - (B) telecommunications equipment and radio and microwave systems;
  - (C) electronic distributed control systems, including building energy management systems;and
  - (D) technical services related to those items.
- (5) "Planning services" means services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- (6) "Separate purchases" means purchases, made separately, of items that in normal purchasing practices would be purchased in one purchase.
- (7) "Sequential purchases" means purchases, made over a period, of items that in normal purchasing practices would be purchased in one purchase.
- (8) "Time warrant" includes any warrant issued by a municipality that is not payable from current funds.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, § 2, eff. Sept. 1, 1989; Acts 1995, 74th Leg., ch. 207, § 1, eff. May 23, 1995.

#### **§ 252.002. Municipal Charter Controls in Case of Conflict**

Any provision in the charter of a home-rule municipality that relates to the notice of contracts, advertisement of the notice, requirements for the taking of sealed bids based on specifications for public improvements or purchases, the manner of publicly opening bids or reading them aloud, or the manner of letting contracts and that is in conflict with this chapter controls over this chapter unless the governing body of the municipality elects to have this chapter supersede the charter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 749, § 5, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, § 7, eff. Sept. 1, 1993.

#### **§ 252.003. Application of Other Law**

The purchasing requirements of Section 361.426, Health and Safety Code, apply to municipal purchases made under this chapter.

Added by Acts 1991, 72nd Leg., ch. 303, § 17, eff. Sept. 1, 1991.

### **SUBCHAPTER B. COMPETITIVE BIDDING OR COMPETITIVE PROPOSALS REQUIRED**

#### **§ 252.021. Competitive Requirements for certain purchases.**

(a) Before a municipality may enter into a contract that requires an expenditure of more than \$25,000 from one or more municipal funds, the municipality must:

- (1) comply with the procedure prescribed by this subchapter and Subchapter C for competitive sealed bidding or competitive sealed proposals or with a method described by Subchapter H, Chapter 271.<sup>1</sup>

---

<sup>1</sup> This completely new subchapter is attached as Attachment A for your reference.

(2) use the reverse auction procedure, as defined by Section 2155.062 (d), Government Code, for purchasing.<sup>2</sup>

(b) Before a municipality with a population of less than 75,000 may enter into a contract for insurance that requires an expenditure of more than \$5,000 from one or more municipal funds, the municipality must comply with the procedure prescribed by this chapter for competitive sealed bidding.

(c) A municipality may use the competitive sealed proposal procedure for high technology procurements and, in a municipality with a population of 75,000 or more, for the purchase of insurance.

(d) This chapter does not apply to the expenditure of municipal funds that are derived from an appropriation, loan, or grant received by a municipality from the federal or state government for conducting a community development program established under Chapter 373 if under the program items are purchased under the request-for-proposal process described by Section 252.042. A municipality using a request-for-proposal process under this subsection shall also comply with the requirements of Section 252.0215.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 56(b), eff. Aug. 28, 1989; Acts 1993, 73rd Leg., ch. 749, § 1, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, § 11, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 45, § 1, eff. May 5, 1995; Acts 1997, 75th Leg., ch. 790, § 1, eff. June 17, 1997.

Amended by Acts 1999, 76th Leg., ch. 571, § 1, eff. June 18, 1999.

#### **§ 252.0215. Competitive Bidding in Relation to Historically Underutilized Business**

A municipality, in making an expenditure of more than \$3,000 but less than \$25,000, shall contact at least two historically underutilized businesses on a rotating basis, based on information provided by the General Services Commission pursuant to Chapter 2161, Government Code. If the list fails to identify a historically underutilized business in the county in which the municipality is situated, the municipality is exempt from this section.

Added by Acts 1993, 73rd Leg., ch. 749, § 3, eff. Sept. 1, 1993. Amended by Acts 1997, 75th Leg., ch. 165, § 17.18, eff. Sept. 1, 1997.

#### **§ 252.022. General Exemptions**

(a) This chapter does not apply to an expenditure for:

- (1) a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality;
- (2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents;
- (3) a procurement necessary because of unforeseen damage to public machinery, equipment, or other property;
- (4) a procurement for personal, professional, or planning services;
- (5) a procurement for work that is performed and paid for by the day as the work progresses;
- (6) a purchase of land or a right-of-way;
- (7) a procurement of items that are available from only one source, including:
  - (A) items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies;
  - (B) films, manuscripts, or books;
  - (C) gas, water, and other utility services;
  - (D) captive replacement parts or components for equipment;
  - (E) books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and
  - (F) management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits;
- (8) a purchase of rare books, papers, and other library materials for a public library;

---

<sup>2</sup> See Attachment B for a definition of "reverse auction"



(9) paving drainage, street widening, and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements;

(10) a public improvement project, already in progress, authorized by the voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes authorized by the voters;

(11) a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212;

(12) personal property sold:

(A) at an auction by a state licensed auctioneer;

(B) at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code;

(C) by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or

(D) under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391;

(13) services performed by blind or severely disabled persons;

(14) goods purchased by a municipality for subsequent retail sale by the municipality; or

(15) electricity.

(b) This chapter does not apply to bonds or warrants issued under Title 118, Revised Statutes, relating to seawalls.

(c) This chapter does not apply to expenditures by a municipally owned electric or gas utility or unbundled divisions of a municipally owned electric or gas utility in connection with any purchases by the municipally owned utility or divisions of a municipally owned utility made in accordance with procurement procedures adopted by a resolution of the body vested with authority for management and operation of the municipally owned utility or its divisions that sets out the public purpose to be achieved by those procedures. This subsection may not be deemed to exempt a municipally owned utility from any other applicable statute, charter provision, or ordinance.

(d) This chapter does not apply to an expenditure described by Section 252.021 (a) if the governing body of a municipality determines that a method described by Subchapter H, Chapter 271, provides a better value for the municipality with respect to that expenditure than the procedures described in this chapter and the municipality adopts and uses a method described in that subchapter with respect to that expenditure.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 47(c), eff. Aug. 28, 1989; Acts 1989, 71st Leg., ch. 1001, § 1, eff. Aug. 28, 1989; Acts 1991, 72nd Leg., ch. 42, § 1, eff. April 25, 1991; Acts 1993, 73rd Leg., ch. 749, § 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, § 9, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 207, § 2, eff. May 23, 1995; Acts 1995, 74th Leg., ch. 746, § 1, eff. Aug. 28, 1995; Acts 1997, 75th Leg., ch. 125, § 1, eff. May 19, 1997; Acts 1997, 75th Leg., ch. 1370, § 3, eff. Sept. 1, 1997.

Amended by Acts 1999, 76th Leg., ch. 405, § 41, eff. Sept. 1, 1999.

#### **§ 252.023. Exemptions From Referendum Provisions**

The referendum provisions prescribed by Section 252.045 do not apply to expenditures that are payable:

(1) from current funds;

(2) from bond funds; or

(3) by time warrants unless the amount of the time warrants issued by the municipality for all purposes during the current calendar year exceeds:

(A) \$7,500 if the municipality's population is 5,000 or less;

(B) \$10,000 if the municipality's population is 5,001 to 24,999;

(C) \$25,000 if the municipality's population is 25,001 to 49,999; or

(D) \$100,000 if the municipality's population is more than 50,000.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, § 1, eff. Aug. 26, 1991.

#### **§ 252.024. Selection of Insurance Broker**

This chapter does not prevent a municipality from selecting a licensed insurance broker as the sole broker of record to obtain proposals and coverages for excess or surplus insurance that provides necessary coverage and adequate limits of coverage in structuring layered excess coverages in all areas of risk requiring special consideration, including public official liability, police professional liability, and airport liability. The broker may be retained only on a fee basis and may not receive any other remuneration from any other source.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

## **SUBCHAPTER C. PROCEDURES**

### **§ 252.041. Notice Requirement**

(a) If the competitive sealed bidding requirement applies to the contract, notice of the time and place at which the bids will be publicly opened and read aloud must be published at least once a week for two consecutive weeks in a newspaper published in the municipality. The date of the first publication must be before the 14th day before the date set to publicly open the bids and read them aloud. If no newspaper is published in the municipality, the notice must be posted at the city hall for 14 days before the date set to publicly open the bids and read them aloud.

(b) If the competitive sealed proposals requirement applies to the contract, notice of the request for proposals must be given in the same manner as that prescribed by Subsection (a) for the notice for competitive sealed bids.

(c) If the contract is for the purchase of machinery for the construction or maintenance of roads or streets, the notice for bids and the order for purchase must include a general specification of the machinery desired.

(d) If the governing body of the municipality intends to issue time warrants for the payment of any part of the contract, the notice must include a statement of:

- (1) the governing body's intention;
- (2) the maximum amount of the proposed time warrant indebtedness;
- (3) the rate of interest the time warrants will bear; and
- (4) the maximum maturity date of the time warrants.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 109, § 2, eff. Aug. 26, 1991; Acts 1993, 73rd Leg., ch. 749, § 4, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 757, § 6, eff. Sept. 1, 1993.

### **§ 252.0415. PROCEDURES FOR ELECTRONIC BIDS OR PROPOSALS.**

(a) A municipality may receive bids or proposals under this chapter through electronic transmission if the governing body of the municipality adopts rules to ensure the identification, security, and confidentiality of electronic bids or proposals and to ensure that the electronic bids or proposals remain effectively unopened until the proper time.

(b) Notwithstanding any other provision of this chapter, an electronic bid or proposal is not required to be sealed. A provision of this chapter that applies to a sealed bid or proposal applies to a bid or proposals received through electronic transmission in accordance with the rules adopted under Subsection (a).

### **§ 252.042. Requests for Proposals for Certain Procurements**

(a) Requests for proposals made under Section 252.021 must solicit quotations and must specify the relative importance of price and other evaluation factors.

(b) Discussions in accordance with the terms of a request for proposals and with regulations adopted by the governing body of the municipality may be conducted with offerors who submit proposals and who are determined to be reasonably qualified for the award of the contract. Offerors shall be treated fairly and equally with respect to any opportunity for discussion and revision of proposals. To obtain the best final offers, revisions may be permitted after submissions and before the award of the contract.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1, § 56(c), eff. Aug. 28, 1989; Acts 1995, 74th Leg., ch. 45, § 2, eff. May 5, 1995.

#### **§ 252.043. Award of Contract**

(a) If the competitive sealed bidding requirement applies to the contract for goods or services, the contract must be awarded to the lowest responsible bidder or to the bidder who provides good or services at the best value for the municipality. (b) In determining the best value for the municipality, the municipality may consider:

- (1) the purchase price;
- (2) the reputation of the bidder and of the bidder's goods or services;
- (3) the quality of the bidder's goods or services;
- (4) the extent to which the goods or services meet the municipality's needs;
- (5) the bidder's past relationship with the municipality;
- (6) the impact on the ability of the municipality to comply with laws and rules relating to contracting with historically underutilized businesses and nonprofit organizations employing persons with disabilities;
- (7) the total long-term cost to the municipality to acquire the bidder's goods or services; and
- (8) any relevant criteria specifically listed in the request for bids or proposals.

(c) Before awarding a contract under this section, a municipality must indicate in the bid specifications and requirements that the contract may be awarded either to the lowest responsible bidder or to the bidder who provides goods or services at the best value for the municipality.

(d) the contract must be awarded to the lowest responsible bidder if the competitive sealed bidding requirement applies to the contract for construction of:

- (1) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or
- (2) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(e) If the competitive sealed bidding requirement applies to the contract for construction of a facility, as that term is defined by Section 271.111, the contract must be awarded to the lowest responsible bidder or awarded under the method described by Subchapter H, Chapter 271.

(f) The governing body may reject any and all bids.

(g) A bid that has been opened may not be changed for the purpose of correcting an error in the bid price. This chapter does not change the common law right of a bidder to withdraw a bid due to a material mistake in the bid.

(h) ~~(b)~~ If the competitive sealed proposals requirement applies to the contract, the contract must be awarded to the responsible offer or whose proposal is determined to be the most advantageous to the municipality considering the relative importance of price and the other evaluation factors included in the request for proposals.

(i) This section does not apply to a contract for professional services, as that term is defined by Section 2254.002, Government Code.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1997, 75th Leg., ch. 1370, § 4, eff. Sept. 1, 1997.

#### **§ 252.0435. Safety Record of Bidder Considered**

In determining who is a responsible bidder, the governing body may take into account the safety record of the bidder, of the firm, corporation, partnership, or institution represented by the bidder, or of anyone acting for such a firm, corporation, partnership, or institution if:

- (1) the governing body has adopted a written definition and criteria for accurately determining the safety record of a bidder;
- (2) the governing body has given notice to prospective bidders in the bid specifications that the safety record of a bidder may be considered in determining the responsibility of the bidder; and
- (3) the determinations are not arbitrary and capricious.

Added by Acts 1989, 71st Leg., ch. 1, § 58(b), eff. Aug. 28, 1989.

**§ 252.044. Contractor's Bond**

(a) If the contract is for the construction of public works, the bidder to whom the contract is awarded must execute a good and sufficient bond. The bond must be:

- (1) in the full amount of the contract price;
- (2) conditioned that the contractor will faithfully perform the contract; and
- (3) executed, in accordance with Chapter 2253, Government Code, by a surety company authorized to do business in the state.

(b) Repealed by Acts 1993, 73rd Leg., ch. 865, § 2, eff. Sept. 1, 1993.

(c) The governing body of a home-rule municipality by ordinance may adopt the provisions of this section and Chapter 2253, Government Code, relating to contractors' surety bonds, regardless of a conflicting provision in the municipality's charter.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1993, 73rd Leg., ch. 865, § 2, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 76, § 5.95(17), eff. Sept. 1, 1995.

**§ 252.045. Referendum on Issuance of Time Warrants**

(a) If, by the time set for letting a contract under this chapter, a written petition with the required signatures is filed with the municipal secretary or clerk requesting the governing body of the municipality to order a referendum on the question of whether time warrants should be issued for an expenditure under the contract, the governing body may not authorize the expenditure or finally award the contract unless the question is approved by a majority of the votes received in the referendum. The petition must be signed by at least 10 percent of the qualified voters of the municipality whose names appear as property taxpayers on the municipality's most recently approved tax rolls.

(b) If a petition is not filed, the governing body may finally award the contract and issue the time warrants. In the absence of a petition, the governing body may, at its discretion, order the referendum.

(c) The provisions of Subtitles A and C, Title 9, Government Code, relating to elections for the issuance of municipal bonds and to the issuance, approval, registration, and sale of bonds govern the referendum and the time warrants to the extent those provisions are consistent with this chapter. However, the time warrants may mature over a term exceeding 40 years only if the governing body finds that the financial condition of the municipality will not permit payment of warrants issued for a term of 40 years or less from taxes that are imposed substantially uniformly during the term of the warrants.

(d) This section does not supersede any additional rights provided by the charter of a special-law municipality and relating to a referendum.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

Amended by Acts 1999, 76th Leg., ch. 1064, § 38, eff. Sept. 1, 1999.

**§ 252.046. Circumstances in Which Current Funds to be Set Aside**

If an expenditure under the contract is payable by warrants on current funds, the governing body of the municipality by order shall set aside an amount of current funds that will discharge the principal and interest of the warrants. Those funds may not be used for any other purpose, and the warrants must be discharged from those funds and may not be refunded.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

**§ 252.047. Payment Method for Certain Contracts**

If the contract is for the construction of public works or for the purchase of materials, equipment, and supplies, the municipality may let the contract on a lump-sum basis or unit price basis as the governing body of the municipality determines. If the contract is let on a unit price basis, the information furnished to bidders must specify the approximate quantity needed, based on the best available information, but payment to the contractor must be based on the actual quantity constructed or supplied.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

**§ 252.048. Change Orders**

(a) If changes in plans or specifications are necessary after the performance of the contract is begun or if it is necessary to decrease or increase the quantity of work to be performed or of materials, equipment, or supplies to be furnished, the governing body of the municipality may approve change orders making the changes.

(b) The total contract price may not be increased because of the changes unless additional money for increased costs is appropriated for that purpose from available funds or is provided for by the authorization of the issuance of time warrants.

(c) If a change order involves a decrease or an increase of \$25,000 or less, the governing body may grant general authority to an administrative official of the municipality to approve the change orders.

(d) The original contract price may not be increased under this section by more than 25 percent. The original contract price may not be decreased under this section by more than 25 percent without the consent of the contractor.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1995, 74th Leg., ch. 706, § 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 746, § 2, eff. Aug. 28, 1995.

#### **§ 252.049. Confidentiality of Information in Bids or Proposals**

(a) Trade secrets and confidential information in competitive sealed bids are not open for public inspection.

(b) If provided in a request for proposals, proposals shall be opened in a manner that avoids disclosure of the contents to competing offerors and keeps the proposals secret during negotiations. All proposals are open for public inspection after the contract is awarded, but trade secrets and confidential information in the proposals are not open for public inspection.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

#### **§ 252.050. Lease-Purchase or Installment Purchase of Real Property**

(a) This section applies only to a lease-purchase or installment purchase of real property financed by the issuance of certificates of participation.

(b) The governing body of a municipality may not make an agreement under which the municipality is a lessee in a lease-purchase of real property or is a purchaser in an installment purchase of real property unless the governing body first obtains an appraisal by a qualified appraiser who is not an employee of the municipality. The purchase price may not exceed the fair market value of the real property, as shown by the appraisal.

Added by Acts 1989, 71st Leg., 1st C.S., ch. 10, § 2, eff. Oct. 18, 1989.

### **SUBCHAPTER D. ENFORCEMENT**

#### **§ 252.061. Injunction**

If the contract is made without compliance with this chapter, it is void and the performance of the contract, including the payment of any money under the contract, may be enjoined by any property tax paying resident of the municipality.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987.

#### **§ 252.062. Criminal Penalties**

(a) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly makes or authorizes separate, sequential, or component purchases to avoid the competitive bidding requirements of Section 252.021. An offense under this subsection is a Class B misdemeanor.

(b) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates Section 252.021, other than by conduct described by Subsection (a). An offense under this subsection is a Class B misdemeanor.

(c) A municipal officer or employee commits an offense if the officer or employee intentionally or knowingly violates this chapter, other than by conduct described by Subsection (a) or (b). An offense under this subsection is a Class C misdemeanor.

Acts 1987, 70th Leg., ch. 149, § 1, eff. Sept. 1, 1987. Amended by Acts 1989, 71st Leg., ch. 1250, § 3, eff. Sept. 1, 1989.

**§ 252.063. Removal; Ineligibility**

(a) The final conviction of a municipal officer or employee for an offense under Section 252.062(a) or (b) results in the immediate removal from office or employment of that person.

(b) For four years after the date of the final conviction, the removed officer or employee is ineligible:

(1) to be a candidate for or to be appointed or elected to a public office in this state;

(2) to be employed by the municipality with which the person served when the offense occurred; and

(3) to receive any compensation through a contract with that municipality.

(c) This section does not prohibit the payment of retirement or workers' compensation benefits to the removed officer or employee.

Added by Acts 1989, 71st Leg., ch. 1250, § 4, eff. Sept. 1, 1989.

ATTACHMENT A

SUBCHAPTER H. ALTERNATIVE PROJECT DELIVERY METHODS FOR CERTAIN PROJECTS

Sec. 271.111. DEFINITIONS. In this subchapter:

(1) "Architect" means an individual registered as an architect under Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(2) "Contractor" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for constructing, rehabilitating, altering, or repairing all or part of the facility at the contracted price.

(3) "Design-build contract" means a single contract with a design-build firm for the design and construction of a facility.

(4) "Design-build firm" means a partnership, corporation, or other legal entity or team that includes an engineer or architect and builder qualified to engage in building construction in Texas.

(5) "Design criteria package" means a set of documents that provides sufficient information to permit a design-build firm to prepare a response to a governmental entity's request for qualifications and any additional information requested, including criteria for selection. The design criteria package must specify criteria the governmental entity considers necessary to describe the project and may include, as appropriate, the legal description of the site, survey information concerning the site, interior space requirements, special material requirements, material quality standards, conceptual criteria for the project, special equipment requirements, cost or budget estimates, time schedules, quality assurance and quality control requirements, site development requirements, applicable codes and ordinances, provisions for utilities, parking requirements, or any other requirement, as applicable.

(6) "Engineer" means an individual registered as a professional engineer under The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes).

(7) "Facility" means buildings the design and construction of which are governed by accepted building codes. The term does not include:

(A) highways, roads, streets, bridges, utilities, water supply projects, water plants, wastewater plants, water and wastewater distribution or conveyance facilities, wharves, docks, airport runways and taxiways, drainage projects, or related types of projects associated with civil engineering construction; or

(B) buildings or structures that are incidental to projects that are primarily civil engineering construction projects.

(8) "Fee" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means the payment a construction manager receives for its overhead and profit in performing its services.

(9) "General conditions" in the context of a contract for the construction, rehabilitation, alteration, or repair of a facility means on-site management, administrative personnel, insurance, bonds, equipment, utilities, and incidental work, including minor field labor and materials.

(10) "Governmental entity" means a municipality, county, or river authority.

Sec. 271.112. APPLICABILITY; OTHER LAW. (a) Any provision in the charter of a home-rule municipality or any regulation of a county or river authority that requires the use of competitive bidding or competitive sealed proposals or that prescribes procurement procedures and that is in conflict with

this subchapter controls over this subchapter unless the governing body of the governmental entity elects to have this subchapter supersede the charter or regulation.

(b) The purchasing requirements of Section 361.426, Health and Safety Code, apply to purchases by a governmental entity made under this subchapter.

(c) Except as provided by this section, to the extent of any conflict, this subchapter prevails over any other law relating to the purchasing of goods and services except a law relating to contracting with historically underutilized businesses.

(d) For a contract entered into by a municipality or river authority under any of the methods provided by this subchapter, the municipality or river authority shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county in which the municipality's central administrative office is located or the county in which the greatest amount of the river authority's

territory is located once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in that county, the notice shall be published in a newspaper of general circulation in the county nearest the county seat of the county in which the municipality's central administrative office is located or the county in which the greatest amount of the river authority's territory is located. In a two-step procurement process, the time and place the second step bids, proposals, or responses will be received are not required to be published separately.

(e) For a contract entered into by a county under any of the methods provided by this subchapter, the county shall publish notice of the time and place the bids or proposals, or the responses to a request for qualifications, will be received and opened. The notice must be published in a newspaper of general circulation in the county once each week for at least two weeks before the deadline for receiving bids, proposals, or responses. If there is not a newspaper of general circulation in the county, the notice shall be:

(1) posted at the courthouse door of the county; and

(2) published in a newspaper of general circulation in the nearest county.

(f) A contract entered into or an arrangement made in violation of this subchapter is contrary to public policy and is void. A court may enjoin performance of a contract made in violation of this subchapter. A county attorney, a district attorney, a criminal district attorney, a resident of a county that enters into a contract under this subchapter or of a county in which a municipality or a river authority that enters into a contract under this subchapter is located, or any interested party may bring an action for an injunction. A party who prevails in an action brought under this subsection is entitled to reasonable attorney's fees as approved by the court.

Sec. 271.113. PROCUREMENT PROCEDURES. (a) In entering into a contract for the construction of a facility, a governmental entity may use any of the following methods that provides the best value for the governmental entity:

(1) competitive bidding;

(2) competitive sealed proposals for construction services;

(3) a design-build contract;

(4) a contract to construct, rehabilitate, alter, or repair facilities that involves using a construction manager; or

(5) a job order contract for the minor repair, rehabilitation, or alteration of a facility.

(b) Except as provided by this subchapter, in determining to whom to award a contract, the governmental entity may consider:

(1) the purchase price;

(2) the reputation of the vendor and of the vendor's goods or services;

(3) the quality of the vendor's goods or services;

(4) the extent to which the goods or services meet the governmental entity's needs;

(5) the vendor's past relationship with the governmental entity;

(6) the impact on the ability of the governmental entity to comply with rules relating to historically underutilized businesses;

(7) the total long-term cost to the governmental entity to acquire the vendor's goods or services; and

(8) any other relevant factor specifically listed in the request for bids or proposals.

Sec. 271.114. EVALUATION OF BIDS AND PROPOSALS FOR CONSTRUCTION SERVICES. (a) The governing body of a governmental entity that is considering a construction contract using a method specified by Section 271.113(a) other than competitive bidding must, before advertising, determine which method provides the best value for the governmental entity. The governing body may, as appropriate, delegate its authority under this section to a designated representative.

(b) The governmental entity shall base its selection among offerors on criteria authorized to be used under Section 271.113(b). The governmental entity shall publish in the request for bids, proposals, or qualifications all the criteria that will be used to evaluate the offerors and the relative weights given to the criteria.

(c) The governmental entity shall document the basis of its selection and shall make the evaluations public not later than the seventh day after the date the contract is awarded.

Sec. 271.115. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE BIDDING. (a) Except to the extent prohibited by other law and to the extent consistent with this subchapter, a governmental entity may use competitive bidding to select a contractor to perform construction, rehabilitation, alteration, or repair services for a facility.

(b) Except as otherwise specifically provided by this subsection, Subchapter B does not apply to a competitive bidding process under this section. Sections 271.026, 271.027(a), and 271.0275 apply to a competitive bidding process under this section.

(c) A governmental entity shall award a competitively bid contract at the bid amount to the bidder offering the best value to the governmental entity according to the selection criteria that were established by the governmental entity. The selection criteria may include the factors listed in Section 271.113(b).

Sec. 271.116. SELECTING CONTRACTOR FOR CONSTRUCTION SERVICES THROUGH COMPETITIVE SEALED PROPOSALS. (a) In selecting a contractor for construction, rehabilitation, alteration, or repair services for a facility through competitive sealed proposals, a governmental entity shall follow the procedures prescribed by this section.

(b) The governmental entity shall select or designate an engineer or architect to prepare construction documents for the project. The selected or designated engineer or architect has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) The governmental entity shall provide or contract for, independently of the contractor, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code, and shall identify them in the request for proposals.

(d) The governmental entity shall prepare a request for competitive sealed proposals that includes construction documents, selection criteria, estimated budget, project scope, schedule, and other information that contractors may require to respond to the request. The governmental entity shall state in the request for proposals the selection criteria that will be used in selecting the successful offeror.

(e) The governmental entity shall receive, publicly open, and read aloud the names of the offerors and, if any are required to be stated, all prices stated in each proposal. Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the published selection criteria.

(f) The governmental entity shall select the offeror that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. The governmental entity and its engineer or architect may discuss with the selected offeror options for a scope or time modification and any price change associated with the modification. If the



governmental entity is unable to negotiate a contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to the next offeror in the order of the selection ranking until a contract is reached or all proposals are rejected.

(g) In determining best value for the governmental entity, the governmental entity is not restricted to considering price alone, but may consider any other factor stated in the selection criteria. Sec. 271.117. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AGENT. (a) A governmental entity may use the construction manager-agent method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-agent, a governmental entity shall follow the procedures prescribed by this section.

(b) A construction manager-agent is a sole proprietorship, partnership, corporation, or other legal entity that provides consultation to the governmental entity regarding construction, rehabilitation, alteration, or repair of the facility. A governmental entity using the construction manager-agent method may, under the contract between the governmental entity and the construction manager-agent, require the construction manager-agent to provide administrative personnel, equipment necessary to perform duties under this section, and on-site management and other services specified in the contract. A construction manager-agent represents the governmental entity in a fiduciary capacity.

(c) Before or concurrently with selecting a construction manager-agent, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer or architect may not serve, alone or in combination with another person, as the construction manager-agent unless the engineer or architect is hired to serve as the construction manager-agent under a separate or concurrent procurement conducted in accordance with this subchapter. This subsection does not prohibit the governmental entity's engineer or architect from providing customary construction phase services under the engineer's or architect's original professional service agreement in accordance with applicable licensing laws.

(d) A governmental entity shall select a construction manager-agent on the basis of demonstrated competence and qualifications in the same manner as provided for the selection of engineers or architects under Section 2254.004, Government Code, except that notice must be published as provided by Section 271.112(d).

(e) A governmental entity using the construction manager-agent method shall procure, in accordance with applicable law, a general contractor, trade contractors, or subcontractors who will serve as the prime contractor for their specific portion of the work.

(f) The governmental entity or the construction manager-agent shall procure in accordance with Section 2254.004, Government Code, all of the testing of construction materials engineering, the inspection services, and the verification testing services necessary for acceptance of the facility by the governmental entity.

Sec. 271.118. CONTRACTS FOR FACILITIES: CONSTRUCTION MANAGER-AT-RISK. (a) A governmental entity may use the construction manager-at-risk method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a construction manager-at-risk, a governmental entity shall follow the procedures prescribed by this section.

(b) A construction manager-at-risk is a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for construction, rehabilitation, alteration, or repair of a facility at the contracted price as a general contractor and provides consultation to the governmental entity regarding construction during and after the design of the facility.

(c) Before or concurrently with selecting a construction manager-at-risk, the governmental entity shall select or designate an engineer or architect who shall prepare the construction documents

for the project and who has full responsibility for complying with The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or Chapter 478, Acts of the 45<sup>th</sup> Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), as applicable. If the engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code. The governmental entity's engineer, architect, or construction manager-agent for a project may not serve, alone or in combination with another, as the construction manager-at-risk unless the engineer or architect is hired to serve as the construction manager-at-risk under a separate or concurrent procurement conducted in accordance with this subchapter.

(d) The governmental entity shall provide or contract for, independently of the construction manager-at-risk, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(e) The governmental entity shall select the construction manager-at-risk in either a one-step or two-step process. The governmental entity shall prepare a request for proposals, in the case of a one-step process, or a request for qualifications, in the case of a two-step process, that includes general information on the project site, project scope, schedule, selection criteria, estimated budget, and the time and place for receipt of proposals or qualifications, as applicable, and other information that may assist the governmental entity in its selection of a construction manager-at-risk. The governmental entity shall state the selection criteria in the request for proposals or qualifications, as applicable. The selection criteria may include the offeror's experience, past performance, safety record, proposed personnel and methodology, and other appropriate factors that demonstrate the capability of the construction manager-at-risk. If a one-step process is used, the governmental entity may request, as part of the offeror's proposal, proposed fees and prices for fulfilling the general conditions. If a two-step process is used, the governmental entity may not request fees or prices in step one. In step two, the governmental entity may request that five or fewer offerors, selected solely on the basis of qualifications, provide additional information, including the construction manager-at-risk's proposed fee and its price for fulfilling the general conditions.

(f) At each step, the governmental entity shall receive, publicly open, and read aloud the names of the offerors. At the appropriate step, the governmental entity shall also read aloud the fees and prices, if any, stated in each proposal as the proposal is opened. Not later than the 45th day after the date of opening the proposals, the governmental entity shall evaluate and rank each proposal submitted in relation to the criteria set forth in the request for proposals.

(g) The governmental entity shall select the offeror that submits the proposal that offers the best value for the governmental entity based on the published selection criteria and on its ranking evaluation. The governmental entity shall first attempt to negotiate a contract with the selected offeror. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(h) A construction manager-at-risk shall publicly advertise, as prescribed for a governmental entity under Section 271.025, and receive bids or proposals from trade contractors or subcontractors for the performance of all major elements of the work other than the minor work that may be included in the general conditions. A construction manager-at-risk may seek to perform portions of the work itself if the construction manager-at-risk submits its bid or proposal for those portions of the work in the same manner as all other trade contractors or subcontractors and if the governmental entity determines that the construction manager-at-risk's bid or proposal provides the best value for the governmental entity.

(i) The construction manager-at-risk and the governmental entity or its representative shall review all trade contractor or subcontractor bids or proposals in a manner that does not disclose the contents of the bid or proposal during the selection process to a person not employed by the construction manager-at-risk, engineer, architect, or governmental entity. All bids or proposals shall be made public after the award of the contract or not later than the seventh day after the date of final selection of bids or proposals, whichever is later.

(j) If the construction manager-at-risk reviews, evaluates, and recommends to the governmental entity a bid or proposal from a trade contractor or subcontractor but the governmental entity requires another bid or proposal to be accepted, the governmental entity shall compensate the construction manager-at-risk by a change in price, time, or guaranteed maximum cost for any additional cost and risk that the construction manager-at-risk may incur because of the governmental entity's requirement that another bid or proposal be accepted.

(k) If a selected trade contractor or subcontractor defaults in the performance of its work or fails to execute a subcontract after being selected in accordance with this section, the construction manager-at-risk may, without advertising, fulfill the contract requirements itself or select a replacement trade contractor or subcontractor to fulfill the contract requirements.

(l) If a fixed contract amount or guaranteed maximum price has not been determined at the time the contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the request for qualifications. The construction manager shall deliver the bonds not later than the 10th day after the date the construction manager executes the contract unless the construction manager furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the construction manager will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 271.119. DESIGN-BUILD CONTRACTS FOR FACILITIES. (a) A governmental entity may use the design-build method for the construction, rehabilitation, alteration, or repair of a facility. In using that method and in entering into a contract for the services of a design-build firm, the contracting governmental entity and the design-build firm shall follow the procedures provided by this section.

(b) The governmental entity shall select or designate an engineer or architect independent of the design-build firm to act as its representative for the duration of the work on the facility. If the governmental entity's engineer or architect is not a full-time employee of the governmental entity, the governmental entity shall select the engineer or architect on the basis of demonstrated competence and qualifications as provided by Section 2254.004, Government Code.

(c) The governmental entity shall prepare a request for qualifications that includes general information on the project site, project scope, budget, special systems, selection criteria, and other information that may assist potential design-build firms in submitting proposals for the project. The governmental entity shall also prepare a design criteria package that includes more detailed information on the project. If the preparation of the design criteria package requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with the applicable law.

(d) The governmental entity shall evaluate statements of qualifications and select a design-build firm in two phases:

(1) In phase one, the governmental entity shall prepare a request for qualifications and evaluate each offeror's experience, technical competence, and capability to perform, the past performance of the offeror's team and members of the team, and other appropriate factors submitted by the team or firm in response to the request for qualifications, except that cost-related or price-related evaluation factors are not permitted. Each offeror must certify to the governmental entity that each engineer or architect that is a member of its team was selected based on demonstrated competence and qualifications in the manner provided by Section 2254.004, Government Code. The governmental entity shall qualify a maximum of five offerors to submit additional information and, if the governmental entity chooses, to interview for final selection.

(2) In phase two, the governmental entity shall evaluate the information submitted by the offerors on the basis of the selection criteria stated in the request for qualifications and the results of an interview. The governmental entity may request additional information regarding demonstrated competence and qualifications, considerations of the safety and long-term durability of the project, the feasibility of implementing the project as proposed, the ability of the offeror to meet schedules, costing methodology, or other factors as appropriate. The governmental entity may not require offerors to submit detailed engineering or architectural designs as part of the proposal. The governmental entity shall rank each proposal submitted on the basis of the criteria set forth in the

request for qualifications. The governmental entity shall select the design-build firm that submits the proposal offering the best value for the governmental entity on the basis of the published selection criteria and on its ranking evaluations. The governmental entity shall first attempt to negotiate a contract with the selected offeror. If the governmental entity is unable to negotiate a satisfactory contract with the selected offeror, the governmental entity shall, formally and in writing, end negotiations with that offeror and proceed to negotiate with the next offeror in the order of the selection ranking until a contract is reached or negotiations with all ranked offerors end.

(e) Following selection of a design-build firm under Subsection (d), that firm's engineers or architects shall complete the design, submitting all design elements for review and determination of scope compliance to the governmental entity or the governmental entity's engineer or architect before or concurrently with construction.

(f) An engineer shall have responsibility for compliance with the engineering design requirements and all other applicable requirements of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes). An architect shall have responsibility for compliance with the requirements of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes).

(g) The governmental entity shall provide or contract for, independently of the design-build firm, the inspection services, the testing of construction materials engineering, and the verification testing services necessary for acceptance of the facility by the governmental entity. The governmental entity shall select those services for which it contracts in accordance with Section 2254.004, Government Code.

(h) The design-build firm shall supply a signed and sealed set of construction documents for the project to the governmental entity at the conclusion of construction.

(i) A payment or performance bond is not required for, and may not provide coverage for, the portion of a design-build contract under this section that includes design services only. If a fixed contract amount or guaranteed maximum price has not been determined at the time a design-build contract is awarded, the penal sums of the performance and payment bonds delivered to the governmental entity must each be in an amount equal to the project budget, as specified in the design criteria package. The design-build firm shall deliver the bonds not later than the 10<sup>th</sup> day after the date the design-build firm executes the contract unless the design-build firm furnishes a bid bond or other financial security acceptable to the governmental entity to ensure that the design-build firm will furnish the required performance and payment bonds when a guaranteed maximum price is established.

Sec. 271.120. JOB ORDER CONTRACTS FOR FACILITIES CONSTRUCTION OR REPAIR. (a) A governmental entity may award job order contracts for the minor construction, repair, rehabilitation, or alteration of a facility if the work is of a recurring nature but the delivery times are indefinite and indefinite quantities and orders are awarded substantially on the basis of predescribed and prepriced tasks.

(b) The governmental entity may establish contractual unit prices for a job order contract by:

(1) specifying one or more published construction unit price books and the applicable divisions or line items; or

(2) providing a list of work items and requiring the offerors to bid or propose one or more coefficients or multipliers to be applied to the price book or work items as the price proposal.

(c) The governmental entity shall advertise for, receive, and publicly open sealed proposals for job order contracts.

(d) The governmental entity may require offerors to submit additional information besides rates, including experience, past performance, and proposed personnel and methodology.

(e) The governmental entity may award job order contracts to one or more job order contractors in connection with each solicitation of bids or proposals.

(f) An order for a job or project under the job order contract must be signed by the governmental entity's representative and the contractor. The order may be a fixed price, lump-sum contract based substantially on contractual unit pricing applied to estimated quantities or may be a unit price order based on the quantities and line items delivered.

(g) The contractor shall provide payment and performance bonds, if required by law, based on the amount or estimated amount of any order.

(h) The base term of a job order contract is for the period and with any renewal options that the governmental entity sets forth in the request for proposals. If the governmental entity fails to advertise that term, the base term may not exceed two years and is not renewable without further advertisement and solicitation of proposals.

(i) If a job order contract or an order issued under the contract requires engineering or architectural services that constitute the practice of engineering within the meaning of The Texas Engineering Practice Act (Article 3271a, Vernon's Texas Civil Statutes) or the practice of architecture within the meaning of Chapter 478, Acts of the 45th Legislature, Regular Session, 1937 (Article 249a, Vernon's Texas Civil Statutes), those services shall be provided in accordance with applicable law.

Sec. 271.121. RIGHT TO WORK. (a) This section applies to a governmental entity while the governmental entity is engaged in:

- (1) procuring goods or services;
- (2) awarding a contract; or
- (3) overseeing procurement or construction for a public work or public improvement.

(b) Notwithstanding any other provision of this chapter, a governmental entity:

(1) may not consider whether a vendor is a member of or has another relationship with any organization; and

(2) shall ensure that its bid specifications and any subsequent contract or other agreement do not deny or diminish the right of a person to work because of the person's membership or other relationship status with respect to any organization.

#### ATTACHMENT B

(d) In this section, "reverse auction procedure" means:

(1) a real-time bidding process usually lasting less than one hour and taking place at a previously scheduled time and Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services; or  
a bidding process usually lasting less than two weeks and taking place during a previously scheduled period and at a previously scheduled Internet location, in which multiple suppliers, anonymous to each other, submit bids to provide the designated goods or services.

# DCI BID SHEET

DIVISION/SECTION							REQUISITIONED BY / PHONE NUMBER			
DATE REQUIRED							DIV. CHIEF NAME / APPROVAL			
FUND	DEPT.	DIV.	SECT.	OBJECT	INDEX NO.	PROJECT NO.		PROJECT NAME		
QUAN.	ITEMS					UNIT	Vendor 1 (name):	Vendor 2 (name):	Vendor 3 (name):	
										Amount Item 1
										Amount Item 2
										Amount Item 3
										Amount Item 4
										Amount Item 5
										Amount Item 6
Complete Description and Need For Which Material or Services is Required:						TOTALS				
						TERMS				
Supply or Services Estimated to Last:						DELIVERY				
DCI Fiscal Approval By:		<u>FOR FISCAL USE ONLY</u>				Requisitioner's Signature				DATE

**CITY OF SAN ANTONIO**  
**CERTIFICATE OF EXEMPTION FROM**  
**COMPETITIVE BID OR PROPOSAL REQUIREMENTS**  
**(This form should be modified by the delegate agency)**

Date: \_\_\_\_\_

Section 252.022 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals, before entering into a contract requiring an expenditure of \$25,000 or more except as specified below:

(Please check which exemption you are certifying)

- |   |   |
|---|---|
| <input type="checkbox"/> a procurement made because of a public calamity that requires funds to relieve the needs of the residents or to preserve city property | <input type="checkbox"/> paving, drainage, street widening and other public improvements or related matter where at least one-third of the costs are paid by special assessments  |
| <input type="checkbox"/> a procurement to preserve or protect the public health or safety of the city's residents   | <input type="checkbox"/> a public improvement project which has been authorized but for which there is deficiency of funds to complete in accordance with the plans as authorized |
| <input type="checkbox"/> a procurement necessary because of unforeseen damage to machinery, equipment or other public property                                  | <input type="checkbox"/> a contract with a developer of a subdivision or land to construct public improvements, not including a building, related to the development              |
| <input type="checkbox"/> a procurement for personal, professional or planning services  | <input type="checkbox"/> personal property sold   |
| <input type="checkbox"/> a procurement for work paid for on a daily basis (day labor)   | <input type="checkbox"/> services performed by blind or severely disabled persons   |
| <input type="checkbox"/> a purchase of land or right-of-way   | <input type="checkbox"/> goods purchased by a municipality for subsequent retail sale by the municipality   |
| <input type="checkbox"/> a procurement of items available from only one source  |   |
| <input type="checkbox"/> a purchase of rare books, papers and other materials for a public library  |   |

This Certificate of Exemption is executed and filed with the Purchasing Department as follows:

1. The undersigned is authorized to approve an exemption.
2. An exemption according to Section 252.022 of the Local Government Code exists. More specifically, the following event has occurred:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. Because the exemption stated above exists, the City of San Antonio intends to contract with \_\_\_\_\_ which will cost approximately \$\_\_\_\_\_

Recommended Certification

\_\_\_\_\_  
Originator

Recommended Certification

\_\_\_\_\_  
Executive Director or Chief Executive Officer

## JUSTIFICATION FOR SOLE SOURCE PURCHASE

This questionnaire has been designed to assist Staff in relating information necessary in the processing of requisitions for sole source/sole brand purchases. Delegate Agency may modify this form as needed.

1. Name, manufacturer and model number of item(s) to be purchased: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
2. Source selections:  
\_\_\_\_ Sole Brand-available from more than one source  
\_\_\_\_ Sole Source-available from only one source
3. Name of source: \_\_\_\_\_  
\_\_\_\_\_
4. Brief description of research or other project for which items(s) will be used: \_\_\_\_\_  
\_\_\_\_\_
5. Performance functions proprietary to the item(s): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Why proprietary performance functions are necessary to accomplishment of research/project goals: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
7. Will the item be used with existing equipment? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes - as a component to be interfaced with existing equipment \_\_\_\_\_ Yes \_\_\_\_\_ No  
-give a brand and model number of existing equipment  
-as an accessory or option \_\_\_\_\_ Yes \_\_\_\_\_ No
8. Will training be required? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If so, how much? \_\_\_\_\_
9. Name other sources whose products have been evaluated and why they do not meet requirements: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Originator's signature/Date

\_\_\_\_\_  
Supervisor's Authorized Signature/Date

\_\_\_\_\_  
Executive Director Authorized Signature/Date

If more space is needed, please attach additional page(s). (This form will be in effect for one year from date of purchasing authorized signature and must be attached to all requests for purchases.)